

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Mark O. Barnett
G. Paul Bollwerk, III

In the Matter of

POWERTECH USA, INC.

(Dewey-Burdock
In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

April 12, 2018

ORDER

(Suspending Scheduled Dates for Dispositive Motions
and Evidentiary Hearing on Contention 1A)

On October 19, 2017, the Licensing Board issued an order granting in part and denying in part the NRC Staff's motion for summary disposition of Contentions 1A and 1B.¹ The Board granted the NRC Staff's motion as to Contention 1B, but denied it as to Contention 1A. Contention 1A pertains to the NRC Staff's National Environmental Policy Act (NEPA) responsibility to adequately address Sioux tribal cultural, religious, and historic resources in the Final Supplemental Environmental Impact Statement (FSEIS).² On Contention 1A, the Board concluded that summary disposition was inappropriate because there remained a factual dispute on whether the NRC Staff's then-proposed method of assessing Tribal cultural resources, proposed to the Oglala Sioux Tribe in an April 14, 2017 letter (the April 2017 Approach), constituted a reasonable method of assessing Tribal cultural resources.³

¹ See LBP-17-09, 86 NRC 167 (2017).

² Id. at 167.

³ Id. at 198.

In accordance with this finding, the Board issued a schedule governing (1) dispositive motions pertaining to Contention 1A; and (2) if needed, an evidentiary hearing to determine the reasonableness of the April 2017 Approach.⁴ However, the Board also noted relative to Contention 1A that “it certainly is not too late for the NRC Staff to consider an alternative method or framework for assessing impacts to tribal cultural resources.”⁵

On March 16, 2018, the NRC Staff abandoned the April 2017 Approach and announced to the parties that it had selected a new approach to identify Lakota Sioux historic, cultural, and religious resources (the March 2018 Approach).⁶ Powertech and the Oglala Sioux Tribe subsequently expressed support and willingness to participate in the NRC Staff’s selected approach.⁷ In a letter to the Board dated April 11, 2018, the NRC Staff acknowledged Powertech’s and the Oglala Sioux Tribe’s support and reaffirmed that it is actively pursuing the immediate implementation of the March 2018 Approach.⁸

In light of these developments, unless the Board receives an objection from any party by April 18, 2018, the dates scheduled for dispositive motions and the evidentiary hearing on

⁴ Id. at 213.

⁵ Id. at 198.

⁶ Letter from Cinthya I. Román, Chief, Environmental Review Branch, to John M. Mays, Chief Operating Officer, Azarga Uranium Corp. (Mar. 16, 2018) (ADAMS Accession No. ML18075A500); Letter from Cinthya I. Román, Chief, Environmental Review Branch, to Trina Lone Hill, Director, Cultural Affairs & Historic Preservation Office, Oglala Sioux Tribe (Mar. 16, 2018) (ADAMS Accession No. ML18075A499); Letter from Cinthya I. Román, Chief, Environmental Review Branch, to Consolidated Intervenors (Mar. 16, 2018) (ADAMS Accession No. ML18075A501).

⁷ Oglala Sioux Tribe’s Response to NRC Staff’s March 16, 2018 Cultural Resources Survey Proposal (Mar. 30, 2018) (ADAMS Accession No. ML18089A655); Letter from John M. Mays, Chief Operating Officer, Azarga Uranium Corp., to Cinthya I. Román, Chief, Environmental Review Branch (Apr. 11, 2018) (ADAMS Accession No. ML18101A223); Tr. at 1346, 1392, 1394.

⁸ Letter from Cinthya I. Román, Chief, Environmental Review Branch, to the Licensing Board at 2 (Apr. 11, 2018) (ADAMS Accession No. ML18101B100).

Contention 1A are suspended effective April 19, 2018,⁹ pending further developments in this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 12, 2018

⁹ See LBP-17-09, 86 NRC at 213.

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NUCLEAR REGULATORY COMMISSION

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POWERTECH (USA) INC.)	Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility))	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Suspending Scheduled Dates for Dispositive Motions and Evidentiary Hearing on Contention 1A)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY
DOCKET NO. 40-9075-MLA

**ORDER (Suspending Scheduled Dates for Dispositive Motions and Evidentiary Hearing
on Contention 1A)**

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 12th day of April, 2018